Friends of the Clearwater

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May 25, 2021

Cheryl Probert
Forest Supervisor
Nez Perce and Clearwater National Forests
903 3rd Street
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Comments sent via post and email: comments-northern-nezperce@usda.gov
Supporting documents sent via post

Dear Supervisor Probert.

These comments are on behalf of Friends of the Clearwater on the 2021 small NEPA scoping letter for several projects.

The materials we cite we consider to be the best science and information. We request notification on all projects in this small NEPA proposal.

NEPA has "twin aims." First, it requires federal agencies "to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process." Kern v. BLM, 284 F.3d 1062, 1066 (9th Cir. 2002), *quoting* Baltimore Gas & Electric Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983). NEPA requires federal agencies to take a "hard look" at the environmental effects of their proposed action. Marsh, 490 U.S. at 374.

We notice that again this year the comment period was extraordinarily short. Short comment periods shortchange public involvement in our national forests. We received notice of these project on May 6 and comments are due by May 25. Part of the public's role in commenting during scoping is to introduce aspects the Forest Service might not have considered. The responsible official should be using scoping comments to determine whether there is uncertainty or certainty as to significant effects, in which case more analysis is needed. By including so many projects in one document and restricting the amount of time the public may review, you have prejudiced our opportunity to comment and your obligatory hard look. Minimally 30 days would have been appropriate, but 45 days would have been more thoughtful of the public.

What we include we consider to be the best available science. When we ask about conditions, we expect the Forest Service to know and to disclose those conditions *before* making a decision on each of these projects, which is not the case in several of the proposals. Uncertainty warrants minimally an environmental assessment because the agency can't understand cumulative effects if the agency doesn't know the baseline conditions in the area.

We request to be notified on all of these projects by email to gary@friendsoftheclearwater.org, jeffjuel@wildrockies.org, and katie@friendsoftheclearwater.org, and by the postal address on our letterhead.

Because several of the proposals below are informed by the same science, in an effort to reduce redundancy, we have placed our discussion of the science at immediately below, which we intend to inform all of the project-specific discussions that follow.

Categorical exclusions are reserved for actions that normally do not have a significant effect on the environment. The presence of certain resources and the cause-effect of the action upon the resources can provide extraordinary circumstances, in which case a categorical exclusion is inappropriate. Those resource conditions are listed at 36 CFR §220.6(b)(1). Various project proposals involve resource conditions listed in the regulations and the actions have cause-effect relationships with the resource that rises to the level of potentially significant impacts, which means that a CE is inappropriate.

Pygmy nuthatch

Pygmy nuthatches are found in western pine forests. Audubon 2021. The Forest Service has noted them in mid-to-late seral ponderosa pine forests with a shrub understory, with higher species density with more live trees and snags per acre. *See* USDA FS 2015 Orogrande Project Wildlife Report. They are a sensitive species, last updated by the Forest Service in 2011. The Idaho ranking is S2 Imperiled. To date, we do not know of any recent monitoring the US Forest Service has done on this species.

Flammulated owls

Flammulated owls are mainly associated with pine forests. Logging, especially dead trees, reduces potential nesting sites. The habitat for flammulated owls has been degraded or lost largely from timber harvest. *See* Hayward 1994. The increases in intermediate-aged forests, for which the US Forest Service and its logging authorizations is responsible, threaten key remaining elements of biodiversity for the flammulated owl. Samson 2005. Habitat analysis in the Nez Perce National Forest found that flammulated owls used "stands with mature to old ponderosa pine and Douglas fir, multiple canopy layers, low tree densities, moderate to low canopy closure, and moderate ground cover." Samson 2005.

Elk numbers

Elk are sometimes known to follow wildfire. Fire, especially natural wildfire, burns in mixed severity, and the post-fire succession provides forage opportunities while unburned patches provide cover. *See* Innes 2011. Elk numbers in the Clearwater rose because early-to-mid 20th Century fires that occur at 200-year-return intervals happened at the right elevation, opening up thousands of acres in addition to a predator removal policy. *See* Walker 2004.

Motorized use of a trail or road also adversely impact elk. Servheen et al. 1997 indicate that motorized trails increase elk vulnerability and reduce habitat effectiveness. The access that trails and roads provide during hunting season also can change habitat selection so elk choose areas where hunting has been restricted. *See* Ranglack et al. 2017

Fire severity

Mixed severity fire is important for our public forests, and that includes high-severity fire. Mixed severity fire, which includes patches of natural high-severity fire, *creates* biological diversity in this region, and wildlife rely on it. When we discuss high-intensity fire, we mean stands with over 75 percent

tree mortality. High-severity fire in public forests are as ecologically important as they can be rare, too—many species evolved with high-severity fire. *See* Bond et al. 2012a, Hanson 2010; and Hutto, "Fire Ecology Stories" https://www.youtube.com/watch?v=5EpTncRMbXs. Snag forest habitat "is one of the most ecologically important and biodiverse forest habitat types in western U.S. conifer forests (Lindenmayer and Franklin 2002, Noss et al. 2006, Hutto 2008)." Hanson 2010. "Many plant and animal species are adapted to post-fire conditions, and populations of some (e.g. many bird species; Figure 1) decline after fire exclusion or post-fire logging." Noss et al. 2006. Hutto 2008 found that the black-backed woodpecker is a specialized species on severely burned forests. Hutto found a distribution of black-backed woodpeckers, which "suggests that conditions created by severe fires probably represent the historical backdrop against which this species evolved." And, "[t]he desire to rid our forests of severe fire beyond the urban interface is, for many forest types, not well grounded in ecological science." Hutto 2008. Please also see LeQuire 2009 and Odion et al. 2014.

Fire refugia helps post-fire habitat. *See* Krawchuk et al. 2016, and Zimmer 2018. The term "fire refugia" focuses "on the idea of locations disturbed less frequently or less severely by wildfire relative to the surrounding vegetation matrix. Fire refugia provide habitat for individuals or populations in which they can survive fire, in which they can persist in the postfire environment, and from which they can disperse into the higher-severity landscape." Meddens et al. 2018. Sometimes refugia can be forecasted, but sometimes these areas survive by happenstance. Zimmer 2018 and Krawchuck et al. 2016. Refugia influences how areas recover.

Soils are also very sensitive after fire.

We are curious with what the forest knows about the impacts of prescribed fire. That is a repeated theme in these small NEPA projects with no references.

Aspen and North Idaho

In Forest Habitat Types of Northern Idaho: A second Approximation, Cooper, et al. 1991 developed a land classification system based on the climax of natural vegetation—plant associations—in northern Idaho Forests, i.e., from the Salmon River to the Canadian border. This report defined habitat type as "land areas potentially capable of supporting similar plant communities at climax." Cooper et al. 1991 p. 5. One attribute these researchers noted is that they provide an "ecologically based system of stratification referenced to vegetation potential." *Id.* The researchers based this classification system not on what exact plants were there at that time, noting that many areas had had disturbance and seral species different from the climax species. Instead, the researchers looked at, given time, at the climax vegetation because vegetative succession can vary, while the "ultimate product of vegetative succession anywhere within the habitat type will always be similar climax communities." *Id.*

These researchers identified eight climax series, 46 habitat types, and 60 additional phases of those habitat types. Notably, a tree type largely absent from northern Idaho, ecologically speaking, was aspen (*Populus tremuloides*).

This is how the Forest Service's Forest Habitat Types of Northern Idaho considered aspen: "*Populus tremuloides*-dominated stands in the core area were considered to be short-lived seral stages; hence, no potential climax series [] is recognized for this species."

Aspen is not a habitat type in northern Idaho of northern Idaho forests.

Roadless impacts

The Forest Service has considered prescribed fire to trammel, i.e., to reduce roadless characteristics in a way that impacts whether the agency recommends the area as wilderness. For example, when reviewing

wilderness potential for the Lochsa Face inventoried roadless area, the Forest Service discussed the apparent naturalness of this roadless area. In this discussion, the Forest Service considered management fire as a human activity, and recommended dropping the Lochsa Face inventoried roadless area from further consideration as wilderness. *See* Draft NPCLWNF Revised FP EIS Appx E, Recommended Wilderness Inventory, p. E-224. With another inventoried roadless areas, the manner in which the Forest Service states prescribed burning suggests these are human impacts to be considered in assessing roadless and wilderness characteristics: "Mining, grazing, and prescribed fire activities have had little impact []." Revised Forest Plan Environmental Impact Statement, Appx E, p. 166. Mining negatively impacts wilderness characteristics. Grazing negatively impacts wilderness characteristics. And, as denoted by this comma series and recognized by the Forest Service when evaluating wilderness, prescribed burns also negatively impact wilderness characteristics.

To state the obvious, *roads*—even temporary roads—reduce roadless characteristics (36 CFR §294.21). They disturb and impair soil, literally requiring trees to be cut and removed and a level surface for a road cut into hillsides. Below is a "temporary" road cut into the hillside of an inventoried roadless area, roadwork and picture from 2017. The cut into the hillside, which one can see on the right side of the picture below, is at least 15 feet tall.

Roads fairly universally impair habitat for threatened, endangered, proposed, candidate, and sensitive species, and species dependent on large, undisturbed areas of land. Roads are unnatural human footprints and reduce natural-appearing landscapes with high scenic quality. Even temporary roads, when decommissioned, leave scars on the landscape that remain for decades. Below is a picture of the same road above, in the West Fork Crooked River inventoried roadless area, but from a satellite.

Above: Orogrande logging project in West Fork Crooked River Inventoried Roadless Area. Years of satellite pictures labeled at top left of each picture; 2016 was the year before the road was built. The orange circle was added to delineate the location of the temporary road.

As one can see above, the temporary road in this inventoried roadless area was built in 2016. We know the road was decommissioned in 2020, but it is unclear as to whether this satellite was before or after that decommissioning because this is how the decommissioning looked on the ground:

Even decommissioned, the road is still very visible and the soil has a certain amount of compaction. From the point of decommissioning, the Forest Service generally represents that it takes at least a decade for a decommissioned road to "blend in" to the surrounding landscape. Although "blend in" is vague, this road will likely be visible in 10 years after decommissioned, which means it will spend over 13 years and counting on the landscape. That is a longer-term impact for a "temporary" road.

Monitoring

Where is the monitoring? Are culverts working like they are supposed to?

1. Bagley Creek Placer Exploration

This would take place in the Cove Roadless Area (also called Gospel Hump by the Forest Service). It is erroneously listed as the Mallard Roadless Area in the scoping letter. Past mining activities have not turned up valuable deposits that have warranted mine development. An EA or EIS is needed to fully evaluate the impacts in the region, including the roadless area. This is particularly important for cumulative impacts from mining, logging, and grazing.

For example, the proposal is to build some road in the Cove Roadless Area. While called "temporary," there is no explicit timeline for how long it would be there (see the section on "roadless impacts" above). Further, there is a crossing of a stream, and issues with ESA-listed species that may be in the project area or affected by the project (downstream) must be addressed. These issues are discussed in more detail below.

The scoping letter gives no proposed time frame for completion of this exploration. It can't be done with a CE unless it takes less than a year. The ten pits may easily take more than a year to complete. Please explain and provide evidence why this project will take place in less than a year's time.

The area is lynx habitat. Noble Creek flows into Big Mallard and then the Salmon River, which is critical habitat for salmon, steelhead and bull trout. The scoping letter says water would be taken from Bagley Creek (A tributary to Noble Creek).

The following photo is what passes for reclamation in wetlands. This photo is in the headwaters of Little Mallard Creek and also just within the Cove inventoried roadless area. This is not far from the project area near the headwaters of Noble Creek, if which Bagley Creek is a tributary.

Other photos of this damage are attached.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995): Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a large proposal.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied.* The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, "Has the claimant made the discovery of a "valuable mineral deposit" on this claim?" (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda). "[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim." (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).

There is no map showing the specific location of the test trenches. Rather than leave that to a later date, an EA or EIS is needed to evaluate proposals. In essence, the Forest Service is proposing to approve the project prior to any analysis. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, the fact it is located within the Cove roadless area, and the length of time this project would take.

We have submitted a Freedom of Information Act request for a copies of what the applicant has submitted. More information should have been in this small NEPA project, but the Forest Service has provided neither the information nor time to properly respond, which has prejudiced public participation.

2. Black Sands Placer exploration

There are some major problems with the proposal. They are the following:

Given the nature of the 4 trenches, can it be assured that this will take only one season? How many projects mining projects approved by CEs run over the one-year maximum on the Nez Perce and Clearwater National Forests over the past ten years?

The project would build trenches in placer gravel, require a stream crossing, and water withdrawal. The impacts on the RHCAs and fish habitat could be significant.

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

The claimant is supposed to stop work if any undiscovered TES species are discovered. Does the claimant have a working knowledge of TES plant species, for example?

The cumulative impacts from work in the mining area need to be considered.

Given these issues, a CE is not sufficient. An environmental assessment is more appropriate.
It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicant, in this case a foreign corporation, may have under the 1872 mining law. In any case, there is no explicit statement that this area is claimed. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995): Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

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Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do nine sample locations and trenches fit in with these requirements?
That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied.* The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a

logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

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In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

4. McBee Special Use Permit: minor special uses.

The map provided with the proposed action does not accurately reflect the road situation on the ground.

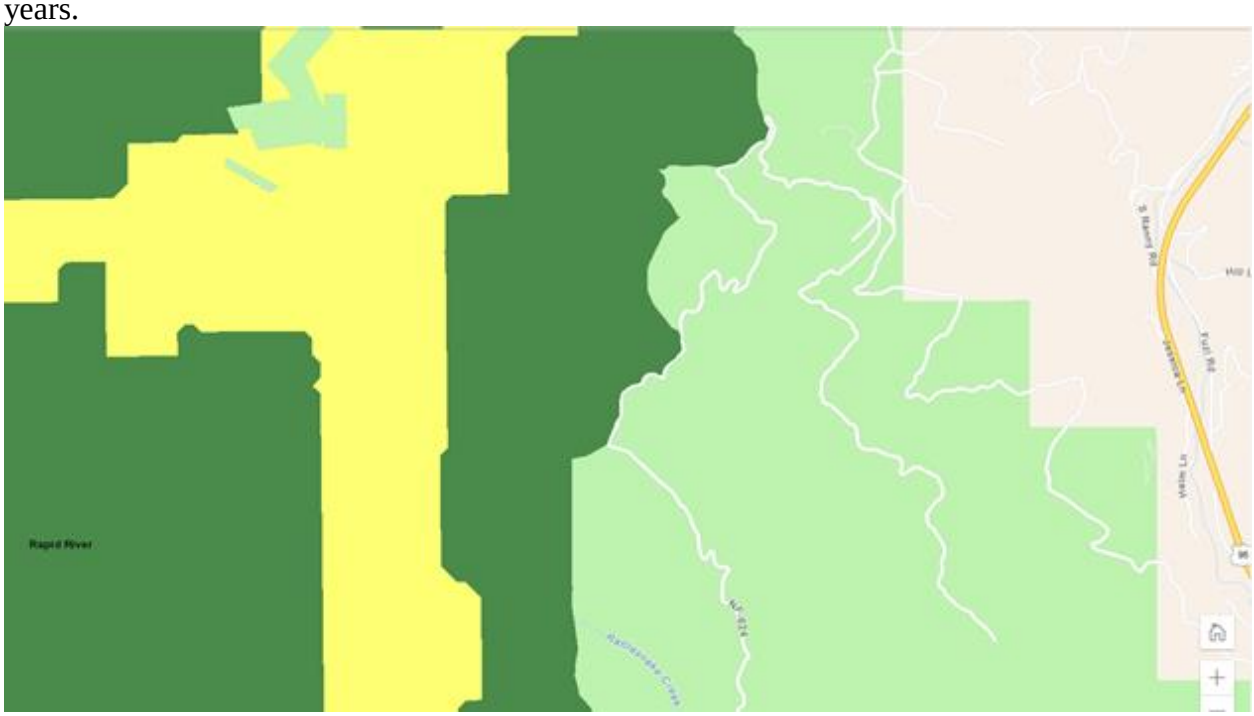
The map provided with the small NEPA proposal does not recognize that FSR 624 and 2056 are connected. The Forest Service should be looking into cumulative effects, especially how illegal road usage already impact elk in this area and how logging operations have impacted elk. The Good Neighbor Authority logging associated with Windy Shingle have left open gates the Windy Shingle decision memo indicated would remain closed. This failure to close gates have allowed hunters to drive into what was supposed to be more secure elk habitat during extended hunting season.

We are concerned this might add to the problem because the landowner has access to 624, and would also have access to this unlawful road connecting 624 and 2056, and thus have access to 2056 as well, which. Forest System Road 2056 appears on the Nez Perce National Forest map to be gated as well. Yet, despite all of this unofficial access, the Forest Service does not indicate an attempt to regulate or even clarify it with the landowner.

Furthermore, if this right of way is not a new usage, the Forest Service must recognize that. For example, the road for which the Forest Service is considering a special use permit has a gate, lock, and key. One landowner in this area asked the Forest Service about this locked gate years ago and was told that it was for the property owners. We understand that the owners of this property have been already driving into this old two-track road for about 4-5 years now. Yet, the Forest Service indicates this is a "new" right of way. The information disclosed to the public has been far short of transparent.

Furthermore, the Forest Service, while recognizing that the inholding is enclosed on three sides by national forest, has not recognized that the inholding is bordered by the Rapid River Inventoried Roadless Area. While there is no road work technically proposed with this permit, the NEPA proposal notes that maintenance would include "pruning and removing hazard trees on NFS lands abutting the right of way." Because FSR 624 is the boundary of the inventoried roadless area, any "maintenance" on the west side of the road will be in the roadless area. The vague parameters of this maintenance and failure to acknowledge the maintenance would happen within the boundary of the inventoried roadless area is problematic because the inventoried roadless area is in the primitive category. *See* 36 CFR part

294. The Forest Service is contemplating a permit that will simply allow tree cutting to happen on the side of 624 that is inside the primitive roadless area without parameters and without monitoring for 20 years.



If the Forest Service is going to grant such an open-ended use permit that will involve permission to work inside of a primitive roadless area, then the agency must analyze those potential impacts in an environmental assessment at least.

In particular, this kind of permission is going to set a precedent which will have an impact on roadless areas, especially if the Forest Service is going to grant a use permit that it won't again monitor.

5. North Fork Aspen 3. 36 CFR 220.6(e)(6)(6).

Proposed CE: 36 CFR §220.6(e)(6):

> Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction.

The 1993 Lawsuit Settlement Agreement entirely prohibits a project like this in these specific roadless areas. Section II.a of the lawsuit settlement agreement on the Clearwater Forest Plan states the following:

> The Forest Service agrees, effective immediately, not to approve any timber sale or road construction project decisions within the area covered by the proposed "Idaho Wilderness, Sustainable Forest and Communities Act of 1993," H.R. 1570 and that such lands will be managed according to Forest Plan standards and guidelines for recommended wilderness (Management Area B2).

We've provided that bill, H.R. 1570. HR 1570 covers the Great Burn area, which means it covers Hoodoo, and Meadow-Creek-Upper North Fork, and Rawhide. HR 1570 also covers Weitas, so this project cannot happen in the Weitas Inventoried Roadless Area. Specifically, the map in the BHROWS Forest Service Document shows the areas. It is provided.

Managing for wilderness character is entirely inconsistent with this project. Cutting down and girdling trees will reduce wilderness character because it does not allow the forces of nature to govern and shape the area. Additionally, girdling leaves the footprints of human management. As discussed above in "Roadless impacts," even the Forest Service notes prescribed burning reduces wilderness characteristics and potential, and this has had tangible outcomes as to what the agency is willing to recommend as wilderness. This project is the antithesis of wilderness; it is manipulating nature. For these reasons, this project cannot move forward lawfully.

In any event, the cause-effect relationship and impact that cutting trees and prescribed burning has on roadless character creates extraordinary circumstances that makes a categorical exclusion inappropriate. This entire project is in inventoried roadless areas. Please see our above discussion "Roadless impacts," where we discuss how the Forest Service considers prescribed fire to reduce roadless characteristics and our examples where this played a part in the agency declining to recommend certain areas for wilderness recommendation during this forest-plan-revision process. Girdling is a clear sign of human footprints, as are stumps (the Forest Service hasn't disclosed whether it is girdling or cutting down trees, alluding to either). Because wilderness recommendations come around every forest-plan revision (which is in these national forests are over every thirty years), even short-term impacts can have long-term implications for potential wilderness. Currently, the Forest Service has recommended moving Rawhide, Upper North Fork, and Weitas Inventoried Roadless Areas forward in wilderness analysis. Appx E-221, 225, 227. Because the Forest Service's own evaluations recognized that prescribed burning can reduce roadless quality to the point it can no longer be considered for wilderness, a cause-effect relationship exists that warrants an environmental assessment and a more thoughtful consideration on impacts to all three of these roadless areas.

Beyond a violation of the lawsuit settlement agreement and the cause-effect impacts on roadless areas, this project appears to be solely for the benefit of ungulates, to the possible detriment of other species. This also makes a categorical exclusion inappropriate.

The Forest Service stated under this proposed project, "A unique terrestrial wildlife assemblage, including Region 1 Sensitive Species such as flammulated owls and pygmy nuthatches, is dependent upon aspen habitat." **This is scientifically incorrect. Both flammulated owls and pygmy nuthatches rely on western pine forests and specifically are found in areas of ponderosa pine, not aspen habitat.** Pygmy nuthatches are found where tree and snag density are greater. While flammulated owls can be found in aspen, it is not the habitat upon which these owls rely. See our above discussions underneath "Pygmy nuthatch" and "Flammulated Owl" for the type of late seral pine forests and vegetation structure these birds need.

This project will not benefit, and may harm, these birds. This project proposes to remove competing vegetation and even cut down mature trees. If there are birds in this area, they will be in the mature trees (including conifers), which is precisely what this project proposes to remove. That the agency notes leaving aspen they find with cavities that could support these birds belies that this project is not for the birds. Reducing and thinning surrounding vegetation can reduce the habitat where the birds are found, especially the pygmy nuthatch.

Furthermore, aspen is not a habitat type found in northern forests, and you haven't considered the potential impacts of trying to increase the land size of what even the Forest Service considers to be a "short-lived seral stages" that will not reach a late-seral vegetation climax. A Forest Service employee represented to us that this strategy was relatively new for the Clearwater. If this is a new strategy, trying to artificially manipulate aspen a region where it tends to be short-lived might have unintended consequences not considered. For a project like this, an EA must be the minimum. Gather and disclose to the public the science and monitoring that has occurred elsewhere for this type of project, and lay out exactly what kind of monitoring you have planned. For example, in this project you have "document elk

utilization." How are going to do that? How often is someone going to visit the area to monitor it? What parameters are going to guide your "ocular estimates"—will the documentation consist of notes only? Pictures and notes explaining the pictures? How and how often are you going to conduct flammulated owl monitoring? For a project like this in the future, we expect an EA. This project, however, should not move forward at all because of the work in inventoried roadless areas.

This project, intended for ungulates, fails to consider several important points. First, elk shouldn't be at numbers they were after the 1910 fires in the mid-20th Century because those fires were ***200-year-return interval fires***, which means the post-fire habitat is 200-year-return-interval, too. Because elk forage off of post-fire succession, it means that elk numbers at a 200-year interval should not be accepted or treated as average. Also, elk numbers were artificially high in the mid-20th Century due to predator removal programs. Earlier this month, the governor of Idaho signed into law a bill that allows the state to remove 90 percent of wolves. Implementation of this bill means a large-scale predator-removal program. In any event, the Forest Service must consider the impacts of this remarkable law since the agency also wants to keep feeding elk.

Finally, this project proposes to increase aspen for browsing by elk, but of these three areas, one overlaps a road, and one overlaps a motorized trail.

Please withdraw this project. The agency cannot do it legally under this forest plan, but beyond that the project will reduce roadless characteristics, could harm pygmy nuthatches and flammulated owls, and will not benefit elk by trying to expand short-lived seral stages in unsecure habitat next to locations with motorized use.

6. North Fork Ponderosa Pine 2

This is not a project that can be approved with a CE because of the potential[1] impact on the Pot Mountain Inventoried Roadless Areas. The roadless cutting doesn't appear to be consistent with the Idaho Roadless rule. This proposal is not within any of the WUI areas identified in the Idaho rule. It may not fit with other requirements of the roadless rule either. It is for producing elk forage (aspen treatments, which seem to be the biggest part of this proposal, rather than ponderosa pine).

Please see the discussion at the start of this comment about pygmy nuthatches, flammulated owls, aspen, elk, and fire. This project may impact pygmy nuthatches and flammulated owl, who reply on ponderosa pine, not aspen as the desired conditions for this project suggest. Aspen is not a habitat type in northern Idaho. This attempt to use a CE to benefit elk will cause questionable impacts on other species.

The description of what would occur states trees up to 8 inches would be cut and then left. The Forest Service and the courts have claimed in the past that stumps distract from the area's potential for wilderness recommendation. See *Kettle Range Conservation Group v. USFS*, 971 F. Supp 480 (DCt. OR, June 17, 1997). See also the attached Annie Rooney document, where an imperceptible impact in the photo is used by the FS to remove that portion of the area from the inventory where the Forest Service desires to do logging. See also the draft Forest Plan EIS includes several examples of where

[1] Our purpose here is not to argue whether or not this proposal will have the kind of impact that would cause the Forest Service not to recommend the area for Wilderness, specifically in the area where this activity would take place, because of that activity. Rather, it is up to the Forest Service to be transparent and honest about the extent of those impacts and to comply with the law in terms of the kind of NEPA analysis needed. As this comment and the attached materials show, the Forest Service has been duplicitous as to the severity of impacts in roadless areas on the Nez Perce and Clearwater National Forests between recent analyses (not significant) and what it says in the DEIS for the upcoming forest plan (impacts that the agency uses to drop from wilderness consideration for many areas).

even agency-ignited fire, supposedly to mimic natural fire, causes impacts to the roadless and wilderness character of the area. Forest Plan Draft EIS Appendix E pages

In any case, logging (cutting) inside a roadless area cannot be approved by a CE. An EIS is usually needed. Courts have ruled the decision to harvest timber (tree cutting in a large scale, and this is what is proposed here as the treatment units total some thousands of acres) on a previously undeveloped tract of land is an irreversible and irretrievable decision, which could have serious environmental consequences. See Smith v. U.S. Forest Service, 33 F.3d 1072, 1077-79 (9th Cir. 1994); National Audubon Socy v. U.S. Forest Service, 4 F.3d 832, 842 (9th Cir. 1993); Lands Council v. Martin, 529 F.3d 1219, 1230-32 (9th Cir. 2008). Other court cases have also held the same thing. California v. Block, Tenakee Spring v. Block, and ICL v. Mumma also direct site-specific analysis for roadless area development.

In other words, this decision to incrementally develop an inventoried roadless area is a major federal action. It requires the preparation of an EIS. Even if we were to accept that an EA was sufficient for this project, the agency proposes to prepare a CE! The Forest Service has another proposal to log in both the Pot Mountain and Mallard Larkins Roadless Areas (see the attached Cool Mush proposal and the Ponderosa Pine #1). The cumulative impacts of all of those proposals must be evaluated.

The Clearwater National Forest Plan (pages II-20 and II-21) requires that before entry into roadless areas occurs, a detailed area analysis, usually done in an EIS, must be prepared. “These analyses will meet NEPA requirements,” according to the plan. The six specific forest plan requirements of the analysis include compressive transportation planning, integrated resource management direction, an assessment of cumulative impacts over 20-50 years, monitoring and feedback, an implementation schedule for various resources activities, and a decision point for inventoried roadless areas on scale of development or nondevelopment for the planning period. None of this is mentioned in the scoping letter. This is a clear violation of the Forest Plan.

The simple matter of fact is the Forest Service is trying to do what may be substantial impacts to a roadless area without proper analysis and ignore cumulative impacts and connected actions. That violates the Forest Plan and NEPA. Agency rules require that an EIS be done. The point of NEPA has been to require environmental information is available to public officials and citizens before decisions are made. NEPA also requires that the agency take a hard look at the effect of Project activities. A CE is inadequate for disclosing the impacts of logging and cutting in an inventoried roadless area. See Kleppe v. Sierra Club, 427 U.S., 390 (1976); California v. Block, 690 F.2d 753 (9th Cir. 1982); and Save the Yaak Committee v. Block, 840 F. 2d 714 (9th Cir. 1988).

In Lands Council v. Martin, 529 F.3d at 1230-32 the court determined there are at least two separate reasons why logging in roadless areas is environmentally significant so that its environmental consequences must be considered. First, roadless areas have certain attributes that must be analyzed, such as water resources, soils, wildlife habitat, and recreation opportunities. These attributes possess independent environmental significance. Second, roadless areas are significant because of their potential for designation as wilderness areas under the Wilderness Act of 1964.

The second point is crucial because the Forest Service claims that Middle Fork Face, on the Nez Perce and Clearwater National Forests, no longer has roadless characteristics. The areas in question are pasted below.

Forest Service Photo

If that is sufficient to destroy roadless characteristics, what about up to thousands of acres of cutting that will leave stumps, so that the effect would be no different than logging? The Forest Service maintained that roadless characteristics were destroyed in an area in *Kettle Range Conservation Group v. USFS*, 971 F. Supp 480 (DCt. OR, June 17, 1997) that old stumps do as well. The Forest Service prevailed on that issue.

Interestingly, the Forest Service now claims that this area from the Orogrande Timber Sale no longer retains wilderness characteristics (*see* Draft NPCLWNF Revised FP EIS Appx E):

Photo courtesy Alpha 1 Photography

The Forest Service did not disclose logging in roadless areas in the scoping letter. Failing to do so violates NEPA because it does not disclose to the public that work in roadless areas are at issue, and NEPA involves disclosing high-quality information to the public. The Forest Service's own regulations requires the scoping document to identify potentially significant issues, yet the scoping document failed to discuss the work done in roadless areas. Roadless areas may very well present extraordinary circumstances, and the Forest Service recognizes so in its regulations. The quality of analysis on impacts to roadless has degraded over the past decade, as indicated in the roadless report that we have included.

In summary, the FS must evaluate the impacts to the roadless area from the cutting. Such an analysis needs to be done in an EIS, or, if the proposal would not affect wilderness characteristics or potential, an EA. A CE is not sufficient.

Unmanaged, roadless areas provide important habitat. The Summary of Scientific Findings for the Interior Columbia Basin Ecosystem Management Project (PNW-GTR-385) found that undeveloped, roadless areas are important for providing habitat for native fish and water quality; are economically valuable to society; and are in relatively good ecological condition.

"Because roads crisscross so many forested areas in Eastside (Columbia Basin), existing roadless regions have enormous ecological value. Existing roadless regions offer important sanctuary. Roadless regions constitute the least-human-disturbed forest and stream systems, the last reservoirs of ecological diversity, and the primary benchmarks for restoring ecological health and integrity." (Rhodes et al. 1994).

The scoping letter fails to consider the importance of roadless areas in that light. Instead, it is as if the roadless areas are targeted because of some ill-informed belief that they need more manipulation and/or corrective action than do roaded areas. In sum, the impacts on the roadless area/proposed wildernesses including the overt "trammeling" of this area by agency-ignited fire, need to be evaluated.

For example, wildlife and plant species have adapted to late summer and fall fires. Spring burning is not mimicking natural processes, and wildlife have not evolved to withstand such impacts. The Forest Service admits as much, "Since most natural fires (wildland fire for resource benefits (WFU) or unwanted wildland fire) occur in late summer to fall, prescribed burning in the spring presents a greater risk to species that are actively growing at that time." (See attached).

Spring burning affects plants very differently than in the late summer/fall. In spring, plants are in different stages of getting ready to put all their energy into growth and reproduction, potentially affecting each species differently, as opposed to in fall when most have already produced seed and are dormant. Similarly, effects on tree roots and fungi are also important issues the scoping letter totally ignores. Almost all of the burns are planned for spring burning, which is not when burns naturally occur in the area.

Agency-ignited prescribed fire cannot come close to meeting the burn characteristics that would have naturally occurred. We encourage you to use your extant natural fire policy in the area to allow natural fire ignitions to play their role even more. That is the only way for a meaningful policy to be ecologically sound. Indeed, it is supposedly the policy in the North Fork Clearwater. For example, rather than proposing extensive human-ignited fire, allowing natural fire to burn, as has been done in the Selway-Bitterroot Wilderness, is a better option. The Forest Service itself claims that in the Selway-

Bitterroot Wilderness, the landscape is now heterogeneous after some 35 years of a natural fire policy. The North Fork fire policy has been in place for nearly 25 years.

The biggest problem with this project is that the determination of the need is not based upon the latest science. For example, the assumption that fuel amounts are driving fire behavior is wrong. Scientists have discovered that **CLIMATE** not fuel amounts is the main determinant of fire severity.

This corresponds with numerous other studies that show fire severity is a function of climate in the northern Rockies. We refer you to the excellent book, Wildfire: A Century of Failed Policy which has already been provided to your office by Friends of the Clearwater.

Baker and Ehle, 2001 (Baker, William L. and Donna Ehle, 2001. Uncertainty in surface-fire history: the case of ponderosa pine forests in the western United States. Can. J. For. Res. 31: 1205–1226 2001 attached) present theory and empirical results that suggest that fire-history data have uncertainties and biases when used to estimate the population mean fire interval or other parameters of the fire regime. In other words, they debunk the myth that ponderosa pine types in the northern Rockies are like those in the Southwest. From their Abstract:

> Present understanding of fire ecology in forests subject to surface fires is based on fire-scar evidence. We present theory and empirical results that suggest that fire-history data have uncertainties and biases when used to estimate the population mean fire interval (FI) or other parameters of the fire regime. First, the population mean FI is difficult to estimate precisely because of unrecorded fires and can only be shown to lie in a broad range. Second, the interval between tree origin and first fire scar estimates a real fire-free interval that warrants inclusion in mean-FI calculations. Finally, inadequate sampling and targeting of multiple-scarred trees and high scar densities bias mean FIs toward shorter intervals. **In ponderosa pine (Pinus ponderosa Dougl. ex P. & C. Laws.) forests of the western United States, these uncertainties and biases suggest that reported mean FIs of 2–25 years significantly underestimate population mean FIs, which instead may be between 22 and 308 years.** We suggest that uncertainty be explicitly stated in fire-history results by bracketing the range of possible population mean FIs. Research and improved methods may narrow the range, but there is no statistical or other method that can eliminate all uncertainty. Longer mean FIs in ponderosa pine forests suggest that (i) surface fire is still important, but less so in maintaining forest structure, and (ii) some dense patches of trees may have occurred in the pre-Euro-American landscape. Creation of low-density forest structure across all parts of ponderosa pine landscapes, particularly in valuable parks and reserves, is not supported by these results. (emphasis added).

In other words, even in the ponderosa pine stands of the Clearwater, have not been affected by past fire suppression to the extent as the Forest Service claims. Other research shows that the high frequency low intensity fire regime ascribed to ponderosa pine in the southwest is not the model here (see for example Baker et al. 2007. Fire, fuels and restoration of ponderosa pine-Douglas fir forests in the Rocky Mountains, USA. J. Biogeogr, (2007) 34: 251-259 and Pierce, Jennifer L. Grant A. Meyer and A.J. Timothy Jull. 2004. Fire-induced erosion and millennial-scale climate change in northern ponderosa pine forests. Nature Vol. 432 87-90.).

Our knowledge of past conditions is limited. Hayward, in a Forest Service publication, indirectly

addresses these topics (Hayward 1994, Hayward, Gregory D., 1994. Information Needs: Great Gray Owls. Chapter 17 *In:* Hayward, Gregory D., and Jon 1Verner, 1994. Flammulated, Boreal, and Great Gray Owls in the United States: A Technical Conservation Assessment. USDA Forest Service General Technical Report RM-253):

> Despite increased interest in historical ecology, scientific understanding of the historic abundance and distribution of montane conifer forests in the western United States is not sufficient to indicate how current patterns compare to the past. In particular, knowledge of patterns in distribution and abundance of older age classes of these forests in not available. …Current efforts to put management impacts into a historic context seem to focus almost exclusively on what amounts to a snapshot of vegetation history—a documentation of forest conditions near the time when European settlers first began to impact forest structure. …The value of the historic information lies in the perspective it can provide on the potential variation… I do not believe that historical ecology, emphasizing static conditions in recent times, say 100 years ago, will provide the complete picture needed to place present conditions in a proper historic context. Conditions immediately prior to industrial development may have been extraordinary compared to the past 1,000 years or more. Using forest conditions in the 1800s as a baseline, then, could provide a false impression if the baseline is considered a goal to strive toward.

Fire suppression apparently has done little if anything to change the natural occurrence of lethal fires in this area. The1910 and 1934 Pete King fires burned well before fire suppression efforts began and/or were effective. Hence, stand-replacing fires (or, as the Forest Service euphemisticallycalls them, "catastrophic fires") are normal here and occur without the "help" of human fire suppression efforts. No fire year in the recorded past has come even close to approaching the size and intensity of the fires of 1910 or 1934. In fact, fire suppression may not have had much of an impact of the forests in this part of the world anyway. The time fire suppression supposedly became effective (circa 1950) to about the mid 1980s corresponds with a wetter period in the Northern Rockies. There is a debate whether fire suppression has even been effective in the Northern Rockies. It is likely many fires put out in that time frame may not have done much anyway during those years.

As such, the assumptions in the scoping letter are not based upon the latest science. Furthermore, the scoping letter is based upon faulty premises. On one hand the Forest Service claims natural fire kept the area heterogeneous. Then the scoping letter leads one to believe that the resulting vegetative structure following the big fires of the early 1900s have left the landscape with an unnaturally high mid seral component.

The agency view is inconsistent. In other words, if the research the agency has relied on in the past is right about the normalcy of stand-replacing fire in the Clearwater, then it is not only part of this system, but a dominant part. If these fires were, in fact, common then the vegetation they created is "natural" including the successional stages. It would stand to reason that there is no real justification to manipulate these successional stages because of 60 years of fire suppression (which may not have been very successful) as the current vegetative condition will have little influence on stand-replacing fires. These fires will burn regardless and reset the clock, so to speak. Thus, the desire to meet some goals of early, late, and mid seral vegetation through manipulation are shortsighted as stand-replacing fire, which is normal and a relatively frequent visitor to the Clearwater, is the trump card in determining seral condition.

Obviously, this proposal has been proposed with the "equilibrium" view of fire ecology. This view holds that frequent, low-intensity surface fires maintained some condition. A contrasting "nonequilibrium" view suggests that many forest ecosystems are subject to unpredictable catastrophic

disturbances that dramatically alter these ecosystems. There is strong evidence of such events before EuroAmerican influence. The more scientists learn, the more the nonequilibrium view holds sway over the equilibrium view.

We do not know what influence, if any, recent fire suppression has played in the North Fork drainage. Any proclamation otherwise is specious at best. Baker and Ehle's research questions the use of fire scar data which would suggest that fire intervals here are so stochastic that statements that this area is somehow out of whack are groundless or that we lack the data to make such a determination. Also, the number of fire starts provides little information as to whether fire would actually burn.

Thus, there is a question whether these forests have missed, in any meaningful way, fire cycles, assuming such a thing even exists. Given global warming, such an assumption is probably erroneous anyway. Indeed, the whole concept of historic ranges is thrown out the window by global warming.

The fact that most fires were suppressed is not meaningful, in and of itself. The agency's experience with prescribed fires in the North Fork shows that it is not always easy to get fires to burn, even in late summer. Over the past few years, your prescribed fires have not burned as vigorously as desired during some years or more vigorously in one or two others. As an example of the latter, the following shows a prescribed burn in Weitas Creek that killed large legacy trees (larch and others) that were intended to be retained:

FOC File Photo

Regardless, conditions for mild underburns are very infrequent. The agency's burn window is very narrow because conditions must be just right, not to hot or dry and not to cool. This suggests that these kinds of fires naturally play a minor role under the current climatic conditions.

The agency needs to ask some questions. Will any late-seral or old-growth forests be burned? If so, will they be changed so they no longer provide the habitat needed by species who inhabit late-seral forests? What is the impact on old growth habitat from this proposal?

Many adverse consequences to soil, ecological processes, wildlife, and other elements of the natural environment are associated with logging, including thinning. (Ercelawn, 1999; Ercelawn, 2000.) For example: Salvage or thinning operations that remove dead or decayed trees or coarse woody debris on the ground will reduce the availability of forest structures used by fishers and lynx. (Bull et al., 2001.)

The FS should firmly establish that the species that exist, or historically are believed to have been present in the analysis area still have viable populations. Since Forest Plan monitoring efforts have failed in this regard, it must be a priority for project analyses. Identification of viable populations is something that must be done at a specific geographic scale. The analysis must cover a large enough area to include a cumulative effects analysis area that would include truly viable populations. Analysis must identify viable populations of MIS, TES, at-risk, focal, and demand species of which the individuals in the analysis area are members in order to sustain viable populations.

The fact that the Clearwater National Forest offices have not adequately monitored the population trends of its old-growth management indicator species (MIS) as required by the Forest Plan bears repeating. Considering potential difficulties of using population viability analysis at the project analysis area level (Ruggiero, et. al., 1994), the cumulative effects of carrying out multiple projects simultaneously across the Forest makes it imperative that population viability be assessed at least at the forest-wide scale (Marcot and Murphy, 1992). Also, temporal considerations of the impacts on wildlife population viability from implementing something with such long duration as a Forest Plan must be considered (id.) but this has not been done. It is also of paramount importance to monitor population trends (as mandated by the Forest Plan) during the implementation of the Forest Plan in order to validate assumptions used about long-term species persistence i.e., population viability (Marcot and Murphy, 1992; Lacy and Clark, 1993).

Unfortunately, region-wide the FS has failed to meet Forest Plan old-growth standards, does not keep accurate old-growth inventories, and has not monitored population trends in response to management activities as required by Forest Plans and NFMA (Juel, 2003).

State-of-the-art conservation biology and the principles that underlie the agency's policy of ecosystem management dictate an increasing focus on the landscape-scale concept and design of large biological reserves accompanied by buffer zones and habitat connectors as the most effective (and perhaps only) way to preserve wildlife diversity and viability (Noss, 1993).

For every project proposal, it is important that the results of past monitoring be incorporated into planning. All Interdisciplinary Team Members should be familiar with the results of all past monitoring pertinent to the project area, and any deficiencies of monitoring that have been previously committed to. For that reason, we expect that the following be included in the NEPA documents or project files:

· A list of all past projects (completed or ongoing) implemented in the proposed project area watersheds.

· The results of all monitoring done in the project area as committed to in the NEPA documents of those past projects.

· The results of all monitoring which has been done in the proposed project area as a part of the Forest Plan monitoring and evaluation effort.

· A description of any monitoring, specified in those past project NEPA documents or the Forest Plan for proposed project area, which has yet to be gathered and/or reported.

Also, frequent burning may not be in the best interest of long-term health of the area. Experience in the North Fork shows that frequent burns can deplete soil nutrients. The Forest Service routinely burned in and around Canyon and Kelly Forks in recent past decades with helicopters. Dr. Jim Peek has been doing research on this in the Lochsa as well. Again, climate is the driver of fires in this region. Adherence to a strict fire regime concept is not supported by the latest science.

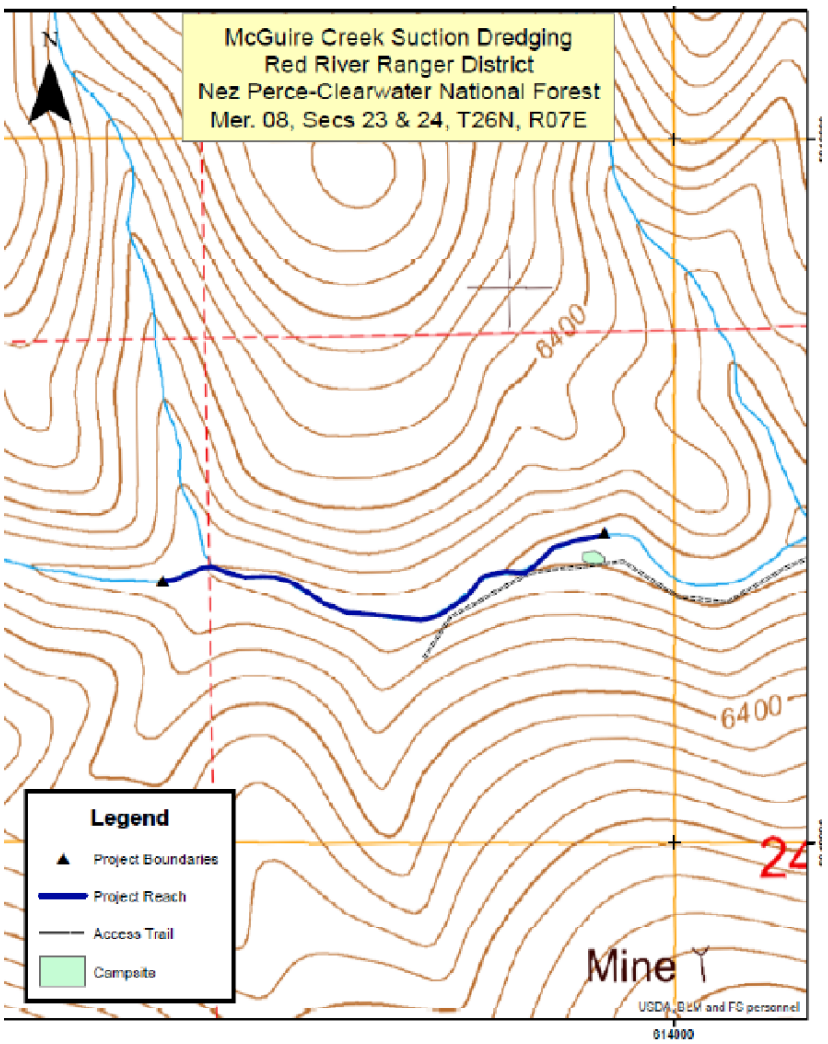
The cumulative impacts from past burning need to be assessed. The Forest Service has proposed burning throughout the North Fork in various projects. We have attached various comments on several of those burning proposals.

The Clearwater is not the Gila National Forest. Yet, that is what the agency seems to want to create here.

In sum, this proposal does not fit in with the landscape or vegetation in the Clearwater. Ponderosa pine and aspen are a minor component of the Clearwater National Forest and always have been. It could have serious negative impacts on the two roadless areas.

8. McGuire Creek Suction Dredging

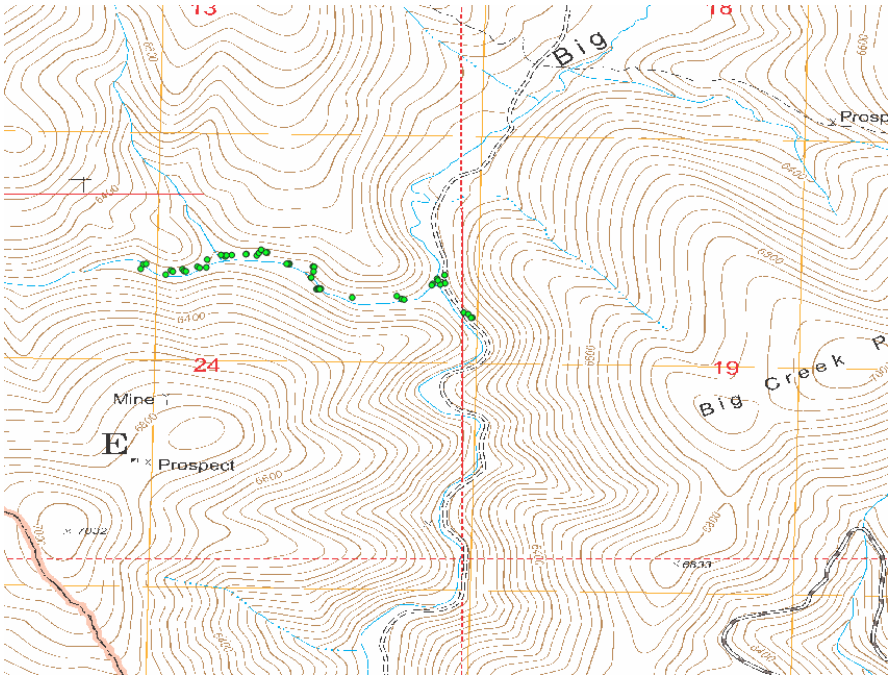
This project is likely ineligible for a categorical exclusion because of cumulative effects in the area. Last year, Friends of the Clearwater monitored up McGuire Creek. First, your map is erroneous.



While your map notes a “serviceable trail,” it is labeled a “road” in the field. Below is a picture of the beginning of the road as it crosses Big Creek, of which McGuire Creek is a tributary.

This picture is taken looking west. This is the road follows McGuire Creek after crossing Big Creek. Note the hill on right side of the picture and the flat meadow-like feature on the left. McGuire Creek is on the left side of this road. Looking west, this means the road is on the *north* side of McGuire Creek, not the south side as the Forest Service has mapped it. And, this is a problem because it means the road fords several other creeks leading into McGuire Creek that the CE does not account for.

We walked along the road on the north side of McGuire Creek and took pictures, denoted by the green dots on the map below.



What's more, someone has extended the access road. Below is construction that allows ATV access, built over wetlands in some instances.

One example of construction along McGuire Creek from each end of the stretch constructed. Above left looking west, above right looking east.




Above: Examples of the road extension, including cuts into the hillside, and the proximity of some of these new roads to water.

In addition to being right next to the creek in some places, we found the newly cut roads to kick up a lot of dust when one just walked down them. That can be easily inferred by the clear tire tracks on fine dirt above. Vehicles will kick up more dust. This road finally turned south and crossed McGuire Creek over

a new bridge, and it looks like, as of approximately a year ago, the road building wasn't done. There was still equipment out there, like shovels and trailers that hook up to ATVs.

This is also in a burned area. So there is likely increased sediment as a natural result of post-fire conditions. On top of the true location of the road, which fords tributaries, and new road construction, which has created a large sediment source right next to the creek, there are several cumulative effects that would preclude a categorical exclusion here.

We submitted these findings on McGuire Creek NEPA comments and pictures for last year's NEPA proposals. Our full monitoring trip, which includes more photos on this area and the map above, can be found in the "McGuire Creek Monitoring" Folder included with these comments. We have also included our previous comments from last year in the same folder.

Naturally we are disappointed that the Forest Service still hasn't corrected the map, nor does the description accurately reflects what is currently there.

Minimally, FS needs to wait on any approval until seeing proof of an NDPES permit. Continuing to approve mining requests without these other approvals sets up a situation where suction dredge miners get the Forest Service approval, refuse to obtain any other permits, and proceed out to the forest to operate without them, violating the Clean Water Act. *See* Idaho Conservation League v. Poe, No. 1:18-cv-353 complaint, opening brief ("Poe-CWA" documents in folder). The Forest Service can help discourage this illegal activity and the resulting cumulative effects by requesting proof that the other permits required by law have been obtained *before* granting a Forest Service permit.

12. O'Hara bridge replacement.

The Forest Service should really be doing an environmental assessment on this because it is in a Wild and Scenic River corridor.

14. Walde Creek Culvert Replacement.

Where is the monitoring? Had this culvert been working like it was supposed to?

15. Whitebark Pine Planting.

One of the premises the Forest Service states for this project implies that wildfire that wildfire is a bad disturbance. The background states, "Wildfires have caused disturbances to the IRA's natural integrity and Opportunity for Experience by creating openness which results in a lack of canopy closure and vegetation coverage increasing sight and sound disturbance to solitude." Proposed action p. 70. Yes, wildfire is a disturbance, but it is a natural ecosystem disturbance, where nature governs as it would in wilderness areas. These natural ecosystem disturbances give rise to incredible biodiversity (see our section above on fire ecology). That this project states that "Opportunity for Experience" means trees (to the extent where they would need to be planted) assumes a value system where natural disturbances are unacceptable and it is okay to trammel nature for trees. This is antithetical to wilderness, thus antithetical to potential wilderness (which is what roadless areas are). FOC members seek out places where nature governs. This is a blatant attempt to manipulate nature and has the potential to reduce wilderness characteristics during a period where the Forest Service is considering wilderness recommendations under the revised forest plan. Also, the Forest Service states, "This project would also promote the National Forest Management Act's requirement is [*sic*] to maintain forested lands in the National Forest System with the appropriate forest cover in terms of species, stocking, and desired stand conditions in accordance with land management plans." Stocking trees on forested lands is for logging--

how is that appropriate for an inventoried roadless area and why should that supercede natural ecosystem processes?

What is the problem with letting this area recover naturally? According to the Forest Service's narrative, this should be a perfect opportunity for the ecosystem to take over and do its thing. The Forest Service often cites "fire suppression" leading to "overstocked" areas, which need to be logged to "reduce fire risk" (see above for why this is not supported by science) or create openings for elk. Here, nature has done that for you--it has "reset" an area to post fire from which succession may happen, and created openings for elk. How is this not good enough? Why do you need to plant?

Please see our above discussion on elk. Elk follow fire, which suggests this area might attract them. How is this project going to impact elk? How are elk going to impact this project?

Roadless characteristics include a high quality of undisturbed soil, a diversity of plant and animal communities, habitat for sensitive and listed species, reference landscapes, and natural appearing landscapes with high scenic quality. This project is going to reduce that. Roadless areas are what the Forest Service evaluates to recommend as wilderness. One of the qualities the Forest Service examines is the "apparent naturalness," which includes whether the area has been "primarily affected by the forces of nature, with the impacts of man's work substantially unnoticeable (apparent naturalness)." Draft NPCLWNF Forest Plan Revision EIS, Appx E-6. In this current forest plan revision, the Forest Service instructs those reviewing wilderness to consider factors like the "composition of plant and animal communities" to determine if they "appear substantially unnatural (for example, past management activities have created a *plantation style* forest with trees of uniform species, ages, and planted in rows." Draft Forest Plan Revision EIS, Appx E-6. Uniform tree species and ages is exactly what is proposed here.

The potential to disturb soil may also significantly impact the area.

Additionally, replanting trees might contribute to later more severe fires than what might have occurred if the Forest Service simply allows natural recovery. Researchers in Thomspon et al. 2007 found that areas salvage-logged and replanted after a 1987 fire burned more severely in a subsequent 2002 fire than unmanaged areas allowed to recover naturally. Zald and Dunn 2018, and Bradley et al. 2016, have found higher severity fires in forest-managed landscapes. *See also* DellaSala 2018. Plantation-style forests can "act as kindling for intense fires." DellaSala 2018.

If the Forest Service approves this project without further analysis, we request monitoring. This agency has demonstrated amnesia with what it predicts won't impact roadless areas and what actually ends up happening.

Thank you in advance for considering these comments. Again, we request notification on all project in the proposed action.

Sincerely,

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